

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Case No.: 3:19-cv-00079-MMD-WGC

4 EMMANUEL CABALLERO,

5 Plaintiff

6 v.

7 ROMEO ARANAS, et. al.,

8 Defendants
9

Order

Re: ECF Nos. 198, 200

10 Before the court are Plaintiff's: (1) Rule 12(f) Motion for the Court to Strike ECF 190 as
11 Immaterial (ECF No. 198) and (2) Motion for a More Definite Statement under FRCP 12(c)
12 (ECF No. 200).

13 Both motions relate to Defendants' pending motion for summary judgment at
14 ECF No. 190.

15 **A. ECF No. 198**

16 Plaintiff argues that Defendants' motion for summary judgment is immaterial and meant
17 to block an *in forma pauperis*, pro se inmate from having a right to challenge the conditions of
18 his confinement. Plaintiff contends that the motion should be stricken because the undersigned
19 recommended that Plaintiff's own motion for summary judgment be denied because there was a
20 genuine dispute of material fact as to whether Dr. Peterson was deliberately indifferent to his
21 serious dental needs.

22 Federal Rule of Civil Procedure 12(f) permits the court to strike "from a *pleading* an
23 insufficient defense or any redundant, immaterial, impertinent or scandalous matter." The motion

1 for summary judgment is not a *pleading*, but is a *motion*; therefore, Rule 12(f) is not applicable
2 to the motion. *See* Fed. R. Civ. P. 7 (listing the following as pleadings: complaint, answer to
3 complaint or counterclaim or crossclaim, a third-party complaint, an answer to a third-party
4 complaint, and if the court orders one, a reply to an answer).

5 While courts have inherent powers to control their dockets, including “the power to strike
6 items from the docket as a sanction for litigation conduct,” Plaintiff has not set forth sufficient
7 grounds to strike Defendants’ motion for summary judgment. *See Ready Transp., Inc. v. AAR*
8 *Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted).

9 Plaintiff moved for summary judgment. It was Plaintiff’s burden to show there was no
10 genuine dispute as to any material fact and that he is entitled to judgment as a matter of law.
11 Fed. R. Civ. P. 56. The court found that: Plaintiff did not cite the particular evidence on which he
12 relies to support the facts he claims are undisputed as is required by Local Rule 56-1; with
13 respect to his claim that his enamel and gums were damaged and he suffered rapid decay, he did
14 not cite any evidence; Plaintiff did not meet his burden of showing that Vargas was deliberately
15 indifferent to his serious dental needs; Plaintiff did not cite any evidence to support his
16 allegations against Dr. Yup (through Dr. Yup’s estate); and, with respect to Dr. Peterson, the
17 dental records submitted by Defendants raised a genuine dispute of material fact as to whether
18 there was deliberate indifference. For these reasons, the undersigned recommended that
19 Plaintiff’s motion be denied, and Chief District Judge Du adopted this recommendation. (ECF
20 Nos. 182, 187.)

21 Defendants also have a right to file their own motion for summary judgment under Rule
22 56. This is true even though the court found Defendants raised a genuine dispute of material fact
23 as to the claim against Dr. Peterson. Defendants must meet their burden of demonstrating that

1 there is no genuine dispute of material fact and they are entitled to judgment as a matter of law.
2 Plaintiff may file a response that argues there is a genuine dispute of material fact by citing to
3 specific evidence as set forth in Rule 56.

4 Plaintiff's motion goes on to argue the merits of his case, but this is appropriately
5 reserved for his response to Defendants' pending motion for summary judgment.

6 For these reasons, Plaintiff's motion (ECF No. 198) is denied.

7 **B. ECF No. 200**

8 ECF No. 200 is a motion for a more definite statement under Rule 12(c). Plaintiff argues
9 that Defendants' motion for summary judgment is so vague and ambiguous that Plaintiff cannot
10 reasonably prepare a response. He argues that: the introduction of the motion is not an
11 introduction but a diatribe; the nature of the case is argumentative; and Plaintiff disputes the
12 statement of material facts and he cannot respond to it within the page limits prescribed by the
13 court; the legal standard is in controversy; and the argument is convoluted, vague and ambiguous
14 and is long.

15 Federal Rule of Civil Procedure 12(c) is the provision providing for a motion for
16 judgment on the pleadings. The provision for a motion for a more definite statement is Rule
17 12(e). The rule provides that a "party may move for a more definite statement of a *pleading* to
18 which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot
19 reasonably prepare a response."

20 Again, Defendants' motion for summary judgment is a *motion* and not a *pleading*.
21 Therefore, Rule 12(e) does not apply to Defendants' motion. Even if it did, the court has
22 reviewed Defendants' motion and finds it is not vague or ambiguous, and Plaintiff can
23 reasonably prepare a response to the motion.

1 As such, Plaintiff's motion for a more definite statement (ECF No. 200) is denied.

2 **CONCLUSION**

3 For the reasons set forth above, Plaintiff's motions (ECF Nos. 198 and 200) are

4 **DENIED.**

5 **IT IS SO ORDERED.**

6 Dated: July 26, 2021

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8 William G. Cobb

9 United States Magistrate Judge
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